

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

08/25/2004

TREMONT REALTY CAPITAL, INC.,

Plaintiff,

v.

PINNACLE GROUP, LLC, ADAMS
CANYON RANCH, LLC, JOHN LANG,
and MICHAEL GRADY,

Defendants.

MAGISTRATE JUDGE

Alexander

Civil Action No. _____

RECEIPT # _____
AMOUNT \$ 150
SUMMONS ISSUED (y) _____
LOCAL RULE 4.1 _____
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. I.O.M. _____
DATE 8/25/04

COMPLAINT

Introduction

1. This action for breach, unjust enrichment, fraud and unfair and deceptive practices arises out of an agreement by Pinnacle Group, LLC, Adams Canyon Ranch, LLC, John Lang, and Michael Grady (collectively, the "Defendants") to pay a brokerage fee to Plaintiff Tremont Realty Capital, Inc. ("Tremont") in the event that the Defendants obtained financing, from any source, for a real estate development project known as The Ranch at Santa Paula located in Ventura County, California (the "Project"). Such financing was obtained and a brokerage fee in the amount of \$830,000 is due Tremont.

Parties

2. Tremont is a Delaware corporation with its principal place of business located at 800 Boylston Street, Suite 401, Boston, Massachusetts.

3. Pinnacle Group, LLC ("Pinnacle") is an Arizona limited liability company with

its principal place of business located at 8145 North 86th Street, Scottsdale, Arizona.

4. Adams Canyon Ranch, LLC ("Adams Canyon") is an Arizona limited liability company with its principal place of business located at 8145 North 86th Street, Scottsdale, Arizona.

5. John Lang is an individual residing in Scottsdale, Arizona. Lang is the manager of Pinnacle.

6. Michael Grady is an individual residing in Scottsdale, Arizona. Grady is the CFO of Pinnacle and the manager of Santa Paula Development Partners, LLC, which is the manager of Adams Canyon.

Jurisdiction and Venue

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are organized under the laws of and maintain their principal places of business in different states and the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

8. Venue in this District is proper under 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

Facts

9. On August 30, 2003, Tremont and the Defendants entered into a Mortgage Banking Agreement (the "Agreement"). A true and accurate copy of the Agreement is attached hereto as Exhibit A.

10. Prior to entering into the Agreement, the parties negotiated the terms of the Agreement over several months. Those negotiations took place primarily during telephone calls between the Defendants and representatives of Tremont located in Boston, Massachusetts.

11. According to the Agreement, the Defendants “grant[ed] Tremont the exclusive right to procure or arrange the subject financing” for a project known as The Ranch at Santa Paula located in Ventura County, California (the “Project”). See Agreement at Paragraph 1.

12. According to the Agreement, the Defendants agreed to pay Tremont “a fee equal to one percent (1%) of the maximum loan amount of any senior debt financing, 3% of any mezzanine or 5% of any equity capital that is committed on the Project.” See Agreement at Paragraph 4.

13. Tremont’s exclusive right to procure or arrange financing for the Project was subject to the exception that if the Defendants obtained financing from a source listed on Appendix 1 to the Agreement, Tremont would not earn the agreed-upon brokerage fee, but rather would earn only a breakup fee of \$25,000. See Agreement at Paragraph 5.

14. The sources listed on Appendix 1 to the Agreement are Funding America, Sion Holdings, and Old Standard Life. A true and accurate copy of Appendix 1 to the Agreement is attached hereto as Exhibit B.

15. Following execution of the Agreement, Tremont introduced the Defendants to Fidelity Management & Research Company (“Fidelity”) as a funding source for the Project.

16. In 2003 and 2004, Tremont, Fidelity and the Defendants negotiated the terms under which Fidelity would provide financing to the Project. Those negotiations took place primarily during telephone calls among the Defendants, representatives of Tremont located in Boston, Massachusetts, and representatives of Fidelity located in Boston, Massachusetts.

17. Fidelity ultimately committed to provide the Defendants with \$16,600,000 in equity financing for the Project subject to the execution of an appropriate financing agreement and related documentation.

18. In the months leading up to July, 2004, Tremont, Fidelity and the Defendants engaged in negotiations concerning the terms of a financing agreement.

19. Fidelity and the Defendants had each retained counsel to assist in negotiating and documenting the terms of a final financing agreement.

20. As of July, 2004, counsel for Fidelity and the Defendants were in the process of exchanging drafts of a financing agreement and related documentation by which Fidelity would provide the Defendants with \$16,600,000 in equity financing for the Project.

21. During the negotiations among Tremont, Fidelity and the Defendants, the Defendants represented to Tremont and Fidelity that they were not engaged in discussions with any potential financing source other than Fidelity and those lenders named on Appendix 1 to the Agreement. At the time Defendants made this representation, upon information and belief, they were engaged in discussions with potential lending source(s) other than Fidelity and those lenders named on Appendix 1 to the Agreement.

22. In July, 2004, the Defendants secured financing for the Project with another lender and ceased all negotiations with Fidelity and Tremont.

23. On July 26, 2004, Tremont made demand upon the Defendants to pay a brokerage fee equal to 5% of the \$16,600,000 in equity financing that Fidelity had committed to the Project. A true and accurate copy of the July 26, 2004 correspondence is attached hereto as Exhibit C.

24. On July 27, 2004, the Defendants rejected Tremont's demand that it be paid the agreed-upon brokerage fee. A true and accurate copy of the July 27, 2004 correspondence is attached hereto as Exhibit D.

COUNT I
(Breach of Contract)

25. Tremont hereby realleges and incorporates paragraphs 1 - 24 above.
26. The Defendants have breached the Agreement by wrongfully refusing and failing to perform their obligations under that agreement, specifically their failure to pay the brokerage fee in accordance with paragraph 4 of the Agreement.
27. Tremont has performed all conditions precedent to its right to collect the brokerage fee.

28. The Defendants' conduct has caused and continues to cause damage to Tremont.

COUNT II
(Breach of the Covenant of Good Faith and Fair Dealing)

29. Tremont hereby realleges and incorporates paragraphs 1 - 28 above.
30. The Agreement contains an implied covenant of good faith and fair dealing.
31. The Defendants are in breach of the implied covenant of good faith and fair dealing contained in the Agreement.

32. The Defendants' conduct has caused and continues to cause damage to Tremont.

COUNT III
(Unjust Enrichment)

33. Tremont hereby realleges and incorporates paragraphs 1 - 32 above.
34. The Defendants have been unjustly enriched by their retention of benefits received in connection with Tremont's performance of its obligations under the Agreement and their refusal to pay Tremont its brokerage fee.
35. The Defendants' conduct has caused and continues to cause damage to Tremont.

COUNT IV
(Fraud)

36. Tremont hereby realleges and incorporates paragraphs 1 - 35 above.
37. The Defendants' misrepresentations that they were not in discussions with potential financing sources other than Fidelity and those lenders named on Appendix 1 to the Agreement constitute false statements of fact and were known to the Defendants to be false when made or were made with reckless disregard for their truth or falsity.
38. The Defendants intended to and did induce Tremont to reasonably rely on their representations as outlined herein to its detriment.
39. The Defendants' conduct has caused and continues to cause damage to Tremont.

COUNT IV
(Unfair and Deceptive Acts and Practices under M.G.L. c. 93A)

40. Tremont hereby realleges and incorporates paragraphs 1 - 39 above.
41. The Defendants are engaged in trade or commerce within the meaning of Mass. Gen. L. c. 93A, § 1.
42. The actions of the Defendants were calculated to obtain the benefits provided by Tremont under the Agreement without having to provide Tremont with the consideration promised under the Agreement.
43. The actions of the Defendants as alleged herein constitute unfair and deceptive acts and practices in violation of Mass. Gen. L. c. 93A, §§ 2 & 11.
44. The unfair and deceptive acts committed by the Defendants were knowing and willful.
45. The Defendants' conduct has caused and continues to cause damage to Tremont.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Tremont Realty Capital, Inc. respectfully requests that this

Court:

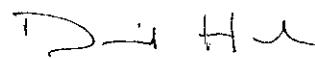
- [a] enter judgment in Tremont's favor and against the Defendants on count I of the Complaint and award damages in an amount to be determined by the trier of fact;
- [b] enter judgment in Tremont's favor and against the Defendants on count II of the Complaint and award damages in an amount to be determined by the trier of fact;
- [c] enter judgment in Tremont's favor and against the Defendants on count III of the Complaint and award damages in an amount to be determined by the trier of fact;
- [d] enter judgment in Tremont's favor and against the Defendants on count IV of the Complaint and award damages in an amount to be determined by the trier of fact;
- [e] award Tremont three times its compensatory and consequential damages for the Defendants' knowing and willful violations of G.L. c. 93A;
- [f] award Tremont its reasonable attorneys' fees and costs due to Defendants' violations of M.G.L. c. 93A; and
- [g] award Tremont such other and further relief as this Court deems just and proper.

JURY DEMAND

Tremont Realty Capital, Inc. hereby demands a trial by jury on all claims so triable.

TREMONT REALTY CAPITAL, INC.

By its attorneys,



James M. Wodarski, BBO# 627036
David Hadas, BBO #641294
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
(617) 542-6000

Dated: August 25, 2004

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) TREMONT REALTY CAPITAL, INC.
V. PINNACLE GROUP, LLC

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).

04-11853 RGS

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? YES NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC 2403) YES NO
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? YES NO

7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES NO
OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES NO

8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES NO
(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? _____

9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Eastern

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION? YES NO OR WESTERN SECTION: YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David Hadas, Esquire -- Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

ADDRESS One Financial Center, Boston, MA 02111

TELEPHONE NO. (617) 348-1793

(Category rev. 3/97)